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ABSTRACT

The Ombudsman for Alberta investigated five allegations raised by the Lubicon Lake Indian Band: (1) that provincial officials had deliberately allowed fires in the Band's traditional area to rage unchecked; (2) that provincial and oil company workers had been instructed to bulldoze deliberately Indian traplines and to scare game out of the area by firing rifles off into the air; (3) that some members of the Band signed agreements under the Land Tenure Program after being misled by provincial officials as to the nature of those agreements, or under duress; (4) that provincial officials acted improperly in advising a Band employee that he was a squatter on Crown land, and must either purchase or lease the land or move his improvements; and (5) that officials of the Northland School Division acted improperly in connection with a proposal to build a school at Little Buffalo, the community where most members of the Bands resided. The Ombudsman concluded that there was no evidence to support most of the charges made and that, until the underlying issue motivating the allegations--the unresolved land claim--is resolved, strained relations between provincial officials and Band leaders and members will continue. (NEC)

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ED267954

SPECIAL REPORT

OF THE

OMBUDSMAN FOR ALBERTA

RE: COMPLAINTS OF THE
LUBICON LAKE INDIAN BAND

AUGUST, 1984

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INTRODUCTION

On April 2, 1984, I received a letter from Mr. Grant Notley, the Leader of the Official Opposition in the Alberta Legislature, asking that I conduct an investigation into certain allegations made against officials and employees of the Government of Alberta who had dealt with members of the Lubicon Lake Indian Band, and other residents of the Little Buffalo area.

Mr. Notley's request referred specifically to allegations which were contained in an undated letter to the then Prime Minister, The Right Honourable Pierre Trudeau, written by the Director of the Programme to Combat Racism of the World Council of Churches.

Much of what was contained in the World Council of Churches' letter referred to an aboriginal land claim which is asserted by the members of the Lubicon Lake Indian Band. That issue, of course, cannot be investigated by the Ombudsman for Alberta, because it is beyond my jurisdiction. In addition to the fact that the land claim involves the Government of Canada, the matter is also pending before two courts.

However, there were certain matters referred to in the World Council of Churches' letter, and identified by the Leader of

the Opposition, which related to matters of administration involving officers and employees of the Government of Alberta.

After being satisfied that Mr. Notley's request for an investigation was submitted by him as an agent of the Chief and members of the Lubicon Lake Indian Band, I agreed to conduct an investigation into three of the charges which had been made.

By letters dated April 5, 1984, I notified Mr. Notley and the Minister of Municipal Affairs, The Honourable Julian Koziak, that my investigation would review:

> (a) the allegation that provincial officials have deliberately allowed fires in the Band's traditional area to rage unchecked;
>
> (b) the allegation that provincial and oil company workers have been instructed to bulldoze deliberately Indian traplines and to scare game out of the area by firing rifles off into the air, insofar as these instructions are alleged to have come from officials or employees of the Government of Alberta.

(c) the allegation that some members of the Lubicon Lake Indian Band signed agreements under the Land Tenure Program of the Department of Municipal Affairs after being misled by provincial officials as to the nature of those agreements, or under duress.

Notices, as required by The Ombudsman Act, were also sent to the Deputy Ministers of the departments involved in the investigation -- the Department of Energy and Natural Resources, the Department of Municipal Affairs and the Managing Director of the Native Secretariat. Later, notice was also given to the Deputy Minister of the Department of Education.

After an initial meeting and at the request of the Band and its representatives, two additional issues were brought within the scope of this investigation:

(d) the allegation that provincial officials had acted improperly in advising a Band employee that he was a squatter on Crown land, and must either purchase or lease the land on which he was residing or move his improvements off the land; and

(e) the allegation that officials of the Northland School Division, during the time that it was under provincial trusteeship, had acted improperly in connection with a proposal to build a school at Little Buffalo, the community where most members of the Lubicon Lake Band reside.

Some of these issues, particularly the allegation relating to the Land Tenure Program operated by the Department of Municipal Affairs, clearly overlap the aboriginal land claim and great care had to be taken to ensure that my investigation did not cross the very fine line that exists. The land claim is a matter which can only be resolved either by the political process or by the courts.

Two of my senior investigators were assigned primary responsibility for the fact-finding phase of this case, and they were able to call upon the other members of my staff as required. Some 60 witnesses were interviewed, some on more than one occasion. The witnesses included members of the Band and other residents of Little Buffalo, government employees and others who were thought to have information which was relevant.

In conducting interviews with some members of the Band, an interpreter was used. The interpreter was carefully selected after I was satisfied that she had no direct connection with members of the Band or the Government of Alberta.

In the next section of this report, I set out my findings on each of the five issues which were the subject of the investigation. These findings were reached only after the most careful scrutiny of the evidence which was available.

As has been the case with many of my Special Reports, I am fully cognizant of the fact that this report will attract criticism from some quarters. There will be those who allege that the parameters of the investigation were too narrowly drawn. There will be some who say that my findings do not go far enough, and there will be some who say they go too far.

I remind them, in advance, that the Ombudsman is bound by the Act which establishes his office. The Act makes clear that the Ombudsman does not have authority over levels of government other than the provincial level, nor does he have jurisdiction to investigate complaints against firms in the private sector. Thus, the matter of the land claim is outside my jurisdiction, as are those complaints that question the conduct of oil companies which are operating in the area.

On those issues which <u>are</u> within my jurisdiction, my findings must be based on the evidence which can be gathered. While I am not bound by any rules of evidence and can, therefore, accept hearsay evidence, for example, I must look for the best evidence available. In this case, my investigators and I have gone to extraordinary lengths to get information from any place we thought it existed. In addition to inviting Band officials to bring forward witnesses who they thought should be interviewed, we have looked for specific witnesses and documentation. My findings are based on that evidence. The Ombudsman must rely on facts, not speculation, in preparing a report, but it is equally important that the Ombudsman consider whether the speculation has any basis in fact. This I have attempted to do in considering each of the issues.

It is appropriate here to express appreciation to all of those who have contributed to the investigation and report. Throughout, we have had the highest possible level of co-operation from residents of the community of Little Buffalo. I am particularly grateful to Chief Bernard Ominayak and his officials for making available to me the facilities in which interviews could be conducted, and for freely providing me with access to Band documents which were relevant to the investigation.

My investigators were advised that some members of the community would be reluctant to be interviewed. However, whenever evidence was produced that another witness might give useful information, that witness was interviewed. While on some occasions, relevant information was obtained, on other occasions, these witnesses denied the knowledge that was attributed to them or simply said they could not remember specific incidents.

Excellent co-operation was also received from government officials contacted by my office. I wish to express particular appreciation to The Honourable Julian Koziak, Minister of Municipal Affairs. Just prior to my announcing my intention to investigate, the Minister had informed the Legislative Assembly that a departmental review would be conducted of the allegations about the Land Tenure Program set out in the letter from the World Council of Churches to the former Prime Minister. After my investigation was announced, the Minister decided to delay that review. I have, in previous reports, discussed the difficulty of an Ombudsman's investigation being conducted concurrently with other investigations, and I am very pleased that the Minister was kind enough to leave the issues to my office, at least in the first instance.

FINDINGS

(a) Forest Fires

The allegation that forest fires were allowed to rage unchecked results from what members of the Little Buffalo community regard as the inaction of Alberta Forestry Service employees in dealing with two fires in the Little Buffalo area in mid-June, 1982. One fire, referred to as the Haig Lake fire, involved a forest north of Little Buffalo, while the other, referred to as the Joker Lake fire, occurred northeast of that community.

When the Alberta Forestry Service received the first report of the Haig Lake fire on June 13, it moved in a three-man crew the same afternoon to assess the situation. At that time, the officer in charge of the crew estimated that the fire covered approximately 60 acres and thus, was too large for the initial response team to fight. Another eight men arrived within an hour, but 90 minutes after that, the fire crowned and was considered to be out of control, now covering an area of approximately 200 acres. Later that evening, four squads of men arrived. Because darkness fell, it was impossible for the helicopter to bring in all of the necessary equipment. The men at the scene prepared their camp, and planned to begin the firefighting in earnest the

following morning. The weather forecast at that time indicated conditions would be conducive to fighting the blaze.

However, the next morning, the wind shifted, blowing the fire directly toward the camp which had been set up. The firefighters were evacuated from the area. The speed with which this had to be done is demonstrated by the fact that the squad supervisors did not have time to count their men and it was only 15 minutes later that it was discovered that three men were unaccounted for. A search found them safe and they were evacuated. However, personal belongings and camp supplies were destroyed by the fire which quickly overtook the camp site.

The Joker Lake fire was first reported on the same day as the Haig Lake fire broke out. The fire was reported by a caterpillar operator who saw lightning strike the forest. Although this fire was within the area referred to as the Slave Lake district, a Forestry Service official from Peace River district drove to the area, because he had ready access to it, and because officers in the Slave Lake district were occupied with other fires. When he arrived, there was no open flame and he felt the fire involved a relatively small area. A caterpillar guard had already been constructed around the site by a construction crew in the area, and it was believed the fire was "being held." Because of other priorities, this official was ordered back to his

home base. Construction workers had been asked to notify the Forestry Service should there be any major change in the status of the fire. When the official left, responsibility for the fire was transferred to the Slave Lake district. Given the absence of an open flame, and the weather forecasts which had been issued, this action was not unreasonable.

The next morning, the Forestry Service received a call from the construction workers saying that there now was a fire beyond the guard which had been constructed. The Slave Lake district foresters were not able to respond immediately, because of the large number of other fires burning out of control within their district. When a forester was able to get to Joker Lake the day after (that is, two days after the lightning strike was reported) he discovered that the same factors which had caused the Haig Lake fire to go out of control, had the same effect on the Joker Lake fire. That officer had to evacuate an oil company camp in the area and arranged for the construction of a further cat guard. The fire continued to burn and joined with other fires, and crews were brought in as they were available to bring this inferno under control.

The allegation raised by some of the residents of Little Buffalo that the Joker Lake fire had been left to rage unchecked finds its basis in the observations by some community members who were not involved in the firefighting effort. Their evidence was

that they saw no firefighting activity in the area. No doubt their reports to other community members gained credence by reason of the fact that none of the firefighters from the Little Buffalo area were involved in the Joker Lake fire.

The allegation regarding inactivity around the Haig Lake fire was raised by firefighters from the Little Buffalo area who were involved with that blaze. Their evidence was that when they arrived, they could have extinguished the fire, if they had been assigned to fight it instead of setting up camp. However, it became clear from questioning them that at no time were they in a position to see clearly the extent of the fire. Thus, their estimates of the size of the fire must be discounted in favour of evidence from those who observed the fire from the air and gave estimates of its actual size.

I am satisfied by the evidence that there was firefighting activity at both sites. However, it must be borne in mind that at this time, more than 150 fires were burning in the province and of these, more than 100 were considered to be out of control.

Given this situation, it is obvious that the Alberta Forestry Service had to develop guidelines in order to establish what priority was to be given to each fire. Quite clearly, fires which were threatening human lives and personal property would

have the highest priority. Thereafter, fires that involved, or threatened to involve, valuable timber stands would receive a higher priority than would, for example, those that involved only scrub bush. Even within these general categories, priorities would have to be drawn. For example, the Haig Lake and Joker Lake areas did contain some timber stands, but they were not as extensive as those in other areas. It must be noted that neither of these fires directly threatened the community of Little Buffalo.

The Alberta Forestry Service has a finite number of men and pieces of equipment at its disposal, and clearly not enough to handle what was an abnormally difficult situation in the province. One gets some idea of the magnitude of the situation when one learns that more than 1,150 people were involved in the firefighting effort on the day that the Haig Lake fire switched direction. The Forestry Service had called for additional help and had received assistance from the Province of British Columbia.

I do not doubt that some residents of Little Buffalo honestly believe that the fires in their area should have received a higher priority. However, I am satisfied that the system for establishing priorities is reasonable and that the Haig Lake and Joker Lake fires were properly placed within this priority system.

There is no evidence to support a statement that there was no firefighting activity at these two sites. Although it might be technically correct to say that these two fires "raged unchecked" for a short period of time, such a blanket statement fails totally to take into account the forest fire situation in the province at that time and the resources which were available to those fighting the fires.

Other areas of the province were in exactly the same situation. Of the more than 100 fires burning out of control on the day following the reports of the Haig Lake and Joker Lake fires, 47 were not being actively fought, because there were simply not enough firefighters available to handle all of the blazes concurrently.

During the investigation, I discovered that the Alberta Forestry Service had learned many lessons from the disastrous 1982 forest fire season. They are taking situations that actually occurred, and using them as the basis for training, and have improved their forest protection operations. This is not to say that the system in effect in 1982 was faulty. Indeed, my observation is that the opposite is true. However, the Forestry Service is to be commended for enhancing an already good system.

(b) Traplines and Wildlife

The specific allegation which was investigated was that provincial and oil company workers had been instructed to bulldoze deliberately traplines belonging to native people and to scare game out of the area by firing rifles off into the air. As noted in the introduction, I could review the actions of oil company workers only insofar as the allegation suggested that they had been instructed to do this by officials or employees of the Government of Alberta.

In order to understand the background of this allegation, one must realize that the area which encompasses Little Buffalo is a major site of resource development. A number of oil companies have sought and been granted permits to conduct seismic testing and other exploration.

Considering that the area is heavily forested, the oil companies, to gain access to the exploration sites, must develop cutlines. This involves bulldozing trees and constructing roadways that will allow the other equipment and vehicles to enter the area.

At the same time, citizens, including residents of Little Buffalo, have trapline licences and some rely on their trapping activities as a major source of income.

Clearly, these facts provide the basis for conflict.

There is no question that traps and snares have been damaged or destroyed by the bulldozing operations. Whether this can be termed "deliberate" depends, to some extent, on the definition one wishes to attach to "deliberate." It is perhaps more appropriate to question whether the action was wilful or negligent.

One can speculate as to whether a given bulldozer operator, told to build a road, simply moves forward without regard to what is in his way or whether he is simply unable to see the traps and snares which are in his way.

My investigation was limited to the question of whether there was any provincial government involvement in the sense that direction or even encouragement was given to bulldozer operators and others to destroy or ignore the traplines.

There is absolutely no evidence before me that this has happened.

Much of the "evidence" which alleged such provincial government involvement is nothing more than speculation. No witness who was interviewed during the course of the investigation was able to provide direct or even indirect evidence of such involvement, nor was I able to find independently any such evidence. One witness to whom I was referred, who was said to have information on this point, denied, both orally and in a written statement, the quotes which had been attributed to him which, it was alleged, would prove such involvement. I have no reason to doubt the credibility of this witness, especially after he was specifically questioned on the point by my investigators.

Similarly, there is no evidence that any provincial government employee or official has ever encouraged anybody to fire a gun to scare away animals. Although I received some evidence that people had discharged firearms, which may have disturbed wildlife, no one was able to provide any information which would allow me to identify these people. I am unable to say whether they were hunters, or oil company workers, or even residents of the area. Obviously, therefore, I am unable to suggest that their actions were deliberate, let alone motivated by instructions from government officials. Again, much of what my complainants regard as "evidence," I must discount as speculation.

Insofar as the trapping was concerned, rather than finding that the government is encouraging destruction of traps and snares, I found evidence that the government is concerned enough about the problem to establish a board to deal with it.

The Trapper Compensation Program, established in 1980, provides compensation for losses of trapping income and damages which stem from activities of the conventional oil and gas industry and for losses and damages to equipment and furs caused by unknown parties. The officials of the Program can, in appropriate cases, act as an informal mediator between a trapper who has suffered a loss and the oil company or any other industry or individual which caused it.

It is interesting to note that the Trapper Compensation Review Board, which administers the Program, has never received an official written complaint from a trapper in the Little Buffalo Lake area. There are a number of possible reasons for this. For example, evidence I have received indicates that in some cases, complaints are settled on the spot between the trapper and the oil company.

I do see an area within the administration of the program which should perhaps be reviewed. In order to set the

stage for this proposal, it is necessary to describe the procedures employed by the Program.

A trapper who suffers damages must initially report it to a Fish and Wildlife officer, forestry officer or a police officer. The trapper is then supplied with the name of the oil company or other firm involved and directed to negotiate compensation directly with the company. If unsuccessful in such negotiations, he may make a written claim to the Trapper Compensation Review Board.

While these procedures might not seem overly burdensome to most people, I do have a concern that it might not fully take into account cultural differences that exist between natives and the white man. Some of those who are regularly dealing with natives, and particularly those in the Little Buffalo area, refer to the "passive nature" of some of the trappers and their hesitation to complain to someone in authority, particularly if he wears a uniform. However, the program insists on the first approach being made to an authority, usually uniformed.

While there is no easy answer to this problem, I express the hope that the provincial officials involved in the Trapper Compensation Program will take the initiative in reviewing the

communication process to ensure that it meets the commendable object for which it was established.

RECOMMENDATION 1

THAT the officials responsible for the Trapper Compensation Program review critically their requirements for the reporting of damage to traps and snares, in an effort to take into consideration the various cultural backgrounds of those who are likely to come into contact with the program.

The other area on which I must make some comment relates to the procedure by which trappers are notified that a road is to be built in the area they are trapping. The current procedure requires the oil company to send a registered letter to the trappers in the area of the proposed road, giving them five days' notice that construction is to begin.

Many of the trappers have postal addresses some distance from their residences, and make only very infrequent trips to collect their mail. This can lead to situations where the notification letter is received six months after the road has been constructed. Clearly, such a situation is undesirable.

When a firm takes out a permit to explore an area, it files, with the government, a plan showing the proposed course for the cutlines it will build to gain access to the exploration site. It seems to me that trappers who are going to be affected should be given as much advance notice as possible of these plans. While one company has recently undertaken a program of having an employee go to the area and try to speak personally with trappers, I recognize that it is not always possible to locate the trappers while they are on their traplines. I also recognize that there are some firms, doing exploration work, which are concerned that providing notice far in advance of the commencement of work will result in disclosure of their plans to their competitors.

It may well be difficult to balance these interests, but I remain of the view that it can be considered unfair to leave trappers in a position where they have no effective notice of the plans to build a cutline before the work is completed. It may be that government officials, after consultations with exploration firms and trappers, can develop a system where, for example, markers are placed on trees along the proposed cutline route.

Whatever ideas emerge from such consultations, it would have to be an improvement over a system which clearly is not working in the way in which it was intended.

RECOMMENDATION 2

THAT the government undertake a review designed to ensure that notice of intention to build cutlines is given to trappers operating in the area of the cutline, and other interested parties, as far as possible in advance of the commencement of work on the cutline.

Until such a review can be completed, and changes implemented, it may be that the government should ensure the continuation of a procedure which was introduced during the 1983-84 trapping season for the notification of trappers resident in the Little Buffalo area. The notification letters were, as usual, mailed to the postal address given by the trapper, but an additional notification was given to the Lubicon Lake Band office. While this is still not an ideal procedure, in that trappers out on the trapline might still not learn of the proposed construction, it was regarded as an improvement by many people.

No changes will guarantee that traps and snares are not ever damaged or destroyed. Indeed, it may well be that some trappers would choose not to move the traps and snares, even if they do have notification. However, doing everything possible to ensure that the notification is received before the construction begins gives an important appearance of fairness.

(c) Land Tenure Program

In 1975, the Government of Alberta created the Land Tenure Program, after studying a proposal put forward by the Metis Association of Alberta. The purpose of the program was to establish and develop communities in selected areas of the province's "Green Zone."

The point of contention insofar as the complainants are concerned involves that part of the program under which land in the selected areas was to be divided into lots and sold, for a nominal sum, to residents of the area. The sum was extremely nominal. For someone who had lived in the area for 18 years, a two-acre lot could be purchased for $1, plus legal fees.

In 1979, the government extended the Land Tenure Program to Little Buffalo, after receiving a petition from some residents of that community. The program began in Little Buffalo in May, 1980.

Problems arose because of differing views of who owns the land which is being sold under the Land Tenure Program. The Province of Alberta considers it provincial Crown land, which may be dealt with as the province wishes. The members of the Lubicon Lake Band say the land is theirs under aboriginal right. As I

have already mentioned in the introduction, it is for the politicians or courts to resolve this issue, but until it is resolved, it will remain a sore point.

As a result of this dispute, the implementation of the Land Tenure Program has been difficult. There is some fear that if members of the Band sign agreements to purchase the land, it may jeopardize their claim of aboriginal right. They have not accepted the assurances of the province that this is not the case. The relationship between anyone representing the provincial government and some of the residents now tends to be one of distrust and suspicion.

During the course of this investigation, allegations of misrepresentation were made by four people who signed applications under the Land Tenure Program, and who later withdrew their applications. The allegations include statements that people were promised free firewood, a trailer or other gifts if they signed agreements, or were threatened that their houses would be bulldozed if they did not sign.

I have been unable to prove or disprove any of these allegations.

At the time of most of these negotiations, the people present were an official of the Land Tenure Program, an interpreter and the person who was being asked to sign an application under the Program.

The provincial government employees involved in these specific negotiations deny that they offered inducements or made threats. Yet the residents involved remain adamant that this is what they were told. The intepreter used in some of the cases has since died; the other interpreter supports the denial given by the provincial employees and denies any suggestion that she changed what the government official said.

It is possible that some of these problems may not be misrepresentation, but rather, poor communication. For example, one complainant told my investigators that she was led to believe she was signing a census form. There is a form, issued by the Land Tenure Secretariat for use in connection with the Land Tenure Program, which contains questions not unlike those asked on a census. Such a misunderstanding, if that is what it was, might have been added to by the fact that the interpreter who was being used had been involved in the federal census.

In another case, a resident first told my investigators that the interpreter (now deceased) had said that the resident would be given a house if he signed a Land Tenure Program agreement. Upon cross-examination, however, there was a slight change in wording and the resident said that he was told if he signed the agreement, he would have land to put his house upon.

Even after the most careful review of evidence, and attempts at finding corroborative evidence (which does not exist), I am unable to come to a finding of fact that would allow me to support the allegations or find them unsubstantiated. I simply have no proof one way or the other.

In any event, the majority of those who had initially signed applications under the Land Tenure Program withdrew those applications. No complaints about the procedure were made to me by those who pursued their applications and subsequently signed agreements, taking possession of the land.

One aspect that caused me some concern was the choice of interpreters made by the Land Tenure Secretariat. Although the deceased interpreter was a councillor of the Improvement District, he was also the person who had organized the petition to have the Land Tenure Program operate in the Little Buffalo area. The members of the Secretariat were aware that the views of this man

differed substantially from those of many others, including the officials of the Lubicon Lake Band. The decision to hire him was perhaps not the wisest course of action which could have been taken. I do not believe that the Secretariat deliberately sought out a proponent to act in what should be the independent role of interpreter, but its actions in hiring this man and his wife as interpreters has led to a situation where there can reasonably be some concern about bias.

To give full credit to the Secretariat, once it recognized the potential for criticism, it attempted to hire another interpreter. This person, who was as strongly opposed to the Land Tenure Program as the other interpreter was in favour, refused the position. Even had he been hired, the same criticism could be made -- that he was not an independent person.

The whole procedure for purchase of land is a complicated one, and ownership of land carries with it certain rights and obligations which can confuse many people. When it is necessary to translate those rights and obligations into another language, it is imperative that the intepreter be above reproach.

I acknowledge that as a result of some of these difficulties, the Secretariat did draw up a Land Tenure Program application form in Cree, the language spoken by many residents of

that area. But I am still concerned that in verbal negotiations, it is imperative that an unbiased interpreter, independent of government and of the controversy, be employed.

RECOMMENDATION 3

THAT in cases where it is necessary to utilize an interpreter in order to explain complicated matters, particularly those relating to legal rights and obligations, government departments use their best efforts to locate a qualified person who will demonstrate independence and provide the interpretation service in a manner not likely to arouse suspicion on the part of the persons who are negotiating with the government.

Two other criticisms were made of the way in which officials handled the Program. One criticism was that repetitive calls were made on people who had initially declined to become involved, and that these contacts amounted to "high-pressure salesmanship." While there may be the appearance of "high-pressure salesmanship," it must also be borne in mind that some of these additional contacts were made at the request of the residents. Whether they involved the criticized salesmanship or were simply to provide information, the Department of Municipal Affairs has recognized the potential for legitimate criticism and

has taken steps to ensure that care is exercised in such repeated contacts. I am pleased that the Department came to this recognition on its own.

The other criticism is that while the benefits of land ownership were stressed during individual negotiations, little comment was made about the responsibilities of such ownership, and particularly the requirement to pay taxes. I am satisfied that the situation regarding taxes was discussed at some of the public meetings held to explain the Land Tenure Program, but the Program official who was involved in the individual negotiations candidly admitted that she did not stress the tax implications during the negotiations, because she was not that knowledgeable about them.

The Department of Municipal Affairs recognizes that this was a shortcoming of the Program, as it was being implemented in Little Buffalo, and has taken steps to ensure that the problem is not repeated. It is unfortunate that some of the individuals who signed applications might not have fully understood the situation, but as I have already noted, those who raised this complaint were among those who withdrew their applications. Once the cancellations were received, the government did not pursue the issue.

A related problem involves the issuance of tax notices to members of the Lubicon Lake Indian Band and some other residents of Little Buffalo. These notices, which are based not on the land occupied by members of the community, but rather on the buildings and improvements on that land, have included statements of penalty charges which are to be applied if payment is not received by a certain date. There are also fears that the province will take action under various statutes to recover the taxes it is claiming.

This is another example of a problem which has arisen from the diametrically-opposed positions taken by the Government of Alberta and the Lubicon Lake Indian Band on the ownership of land in the Little Buffalo area. The government, on the one hand, says that the land belongs to the provincial Crown, and members of the Band who erect buildings or improvements on that land are subject to taxation in the same way as anyone else in that position. The Band, on the other hand, says that the land on which these buildings or improvements are erected, is theirs by aboriginal right and thus no taxes are payable.

The province clearly feels that it has a legal basis to its claim that the Crown owns the land in dispute. Likewise, the Band feels that it has a legal basis to its aboriginal land claim. I cannot say who is correct; only the courts can do that. But

until that decision is made, both sides are obviously exercising all of the rights and obligations they feel they have.

In terms of the tax notices, the province has an obligation, by statute, to issue notices for the payment of taxes in cases where improvements or buildings are erected on provincial Crown land. Clearly, the province cannot ignore that obligation unless it abandons its claim to the land.

If I cannot say that the government is wrong in its legal claim, and I cannot, then how can I conclude that it is wrong in complying with statutes that require issuance of tax notices? At the same time, my conclusion should not be read as an expression that the land claim asserted by the Band is invalid. The government, in issuing the notices, is doing what it feels it is required to do. The Band members, by refusing to pay the taxes, are doing what they feel they are entitled to do. Clearly, it is up to the politicians or the courts to decide the outcome of this dispute.

The government has not, to this point, taken any action to collect the taxes by extraordinary means, and so the situation has not arisen where I am called upon to consider the appropriateness of such action. If, in future, such action is taken, a complaint about it can be made to the Ombudsman and it

can be only in the face of the specific facts of that case that a conclusion could be drawn on that issue.

Given the situation which faces me -- the sole issue of the issuance of the tax notices -- I cannot fault the administrative arm of government for taking steps which, in its opinion, reasonably held, comply with the law as it exists.

(d) The Trespass Notice

As noted in the previous section, there is a major disagreement as to the ownership of the land in the area of Little Buffalo. This allegation goes directly to that point.

A resident of the area moved on to some land and built a house, in which he is now living. The provincial government takes the position that this man is a "squatter" and a trespasser on provincial Crown land.

By letter dated November 16, 1983, the Forest Superintendent in Peace River, wrote to this man in the following terms:

> "The Director of the Rural Home Assistance Program of the department of Housing and Public Works informed our Edmonton Office that you have received a grant through this program for materials to construct a house.
>
> "All vacant lots in Little Buffalo that are not under Land Tenure and held by Energy and Natural Resources must be covered under a Miscellaneous Lease. There is an option were (sic) you can buy the lot after the lease is approved and issued.
>
> "Please call at the Forestry office next time you are in Peace River and ask for (name of employee). Application can then

be completed for your signature.
Application fee is $10.00."

When the man did not apply for the Miscellaneous Lease, he received another letter, this time from the Deputy Minister of Renewable Resources. That letter, dated March 12, 1984, read as follows:

> "Information on our file reveals that you have constructed a home on the above lot without proper authority from this Department.
>
> "Pursuant to Section 46(1) of the Public Lands Act a person who occupies public land and is not the holder of a disposition authorizing him to do so, shall be deemed to be a trespasser and any improvements created by him are the property of the Crown.
>
> "In view of the circumstances, I would urge you to make the appropriate application to either lease or purchase this lot or remove your improvements.
>
> "Should you desire to continue to reside on this lot, you can make application to lease or purchase in the Public Lands Office, Provincial Building, Peace River, Alberta. . . ."

In response to this letter from the Deputy Minister, the Chief of the Lubicon Lake Band wrote to the Minister of Energy and Natural Resources disputing the Deputy Minister's claim that the land belonged to the Crown. The letter set forth the grounds on which the Lubicon Lake Band has asserted its claim for aboriginal rights to the land, and argued that the man in question was

entitled, as of right, to remain there if he wished, without the need of taking out any permit from the government.

The Minister replied to that letter, saying that the Department's position remained the same as that set out by the Deputy Minister.

The complaint to me is that the Forest Superintendent and the Deputy Minister of Renewable Resources should not have written the letters they did. It is only the letters which are in question, since the Department has not pursued the removal of this man from the land involved in the dispute.

The evidence before me is that in preparing the letters, the Department officials relied on legal advice, designed to protect what the Crown regards as its interest in the land.

Obviously, I cannot say whether the man involved is trespassing or not. That goes to the very heart of the land claim issue and, as I have already noted, must be resolved by the political process or by the courts.

Therefore, I cannot say that the Department officials acted unreasonably or inappropriately in following the legal advice they had received. The fact that the members of the

Lubicon Lake Band do not agree with the Crown's position is well known, but that does not, in itself, make the Department's actions wrong.

(e) The School

This final complaint relates to the actions of the Northland School Division which, in the opinion of the Lubicon Lake Indian Band, attempted to force a new school upon the Band, despite the Band's opposition. This, according to the complainants, was an attempt to interfere with the aboriginal land claim asserted by the Band.

In most situations, I would not have the authority to investigate such an issue, since it relates to a matter of local government, over which I have no jurisdiction. However, in late 1981, the Minister of Education issued an order dissolving the board of the Northland School Division, and placing it under trusteeship. The Trustee so appointed was given all of the authority that would ordinarily be exercised by elected school boards and because he was an employee of the Government of Alberta, his actions are subject to review by the Ombudsman.

In January, 1982, a short time after he took office, the Trustee met with a councillor from the Lubicon Lake Indian Band. There is no question that at that meeting, the councillor asked the Trustee to expedite the building of a new school at Little Buffalo to replace the current school building, which is, by

general agreement, woefully inadequate. The Trustee agreed to consider the matter and hold consultations in the area.

In an attempt to implement the recommendations contained in a study which had been made of the Northland School Division, the Trustee announced his intention to arrange for the election of Community School Boards in a number of areas within the Northland School Division, including the community of Little Buffalo. The Trustee sent to all communities a document which set out the terms of reference for these Community School Boards. The document contained the following statement:

> "Although final authority for decision on educational matters rest (sic) with the Northland Board, the Northland Board is committed to very seriously consider all advice and recommendations presented by the Community School Board."

A Community School Board was elected in Little Buffalo in June, 1982. Shortly thereafter, it considered the question of the new school. It was concerned about the proposal to build the school immediately because of the unresolved land claim.

The initial plan for building the school would require a federal-provincial agreement, under which the Government of Canada, through the Department of Indian and Northern Affairs, would pay a percentage of the cost, depending on the number of

status native children who would be attending the school. Under the federal department's guidelines, money for such a school could only be paid once every 25 years.

The concern of the Community School Board, and of the Band, was that if the school proposed by the Northland School Division was built and, if subsequently, the land claim was accepted and the Band given lands in an area that did not encompass Little Buffalo, it would not be able to seek funds for a school in its new community.

Thus, in August, 1982, the Community School Board sent a resolution to the Northland School Division, seeking postponement of any plans to build the school for one year.

The Trustee felt that it was important to the quality of education that a new school be built, and was prepared to build it using only provincial funds, if no federal funds were available. It is important to realize that under the policies and procedures of the Department of Indian and Northern Affairs, no federal funds would be used unless and until the Lubicon Lake Indian Band Council passed a formal resolution requesting the school.

In September, 1982, the Northland School Division completed a submission form, prescribed by the federal government, dealing with the proposed Little Buffalo school and forwarded it to the Department of Indian and Northern Affairs. One question on that form asked if the Band Council involved had expressed itself in favour of the new school. No answer was given to that question by the Northland School Division. According to officials of the Department of Indian and Northern Affairs, this lack of a response would indicate to it that the Northland School Division did not know the formal position being taken by the Band Council, as opposed to that of the Community School Board.

The lack of an answer, according to the federal officials, would in no way be interpreted as a positive response and, as noted above, no federal funds would be expended until the Band Council passed a resolution agreeing to the school.

However, in January, 1983, a letter went from a federal official to an official of the Lesser Slave Lake Indian Regional Council, to which the Lubicon Lake Indian Band belonged. That letter, discussing the proposed Little Buffalo school, as well as others, included the following statement:

> "The submissions indicate that the Band Councels (sic) involved, expressed themselves in favour of the joint school.

> . . .Before we proceed with our proposals, we will require Band approval in the form of a Band Council Resolution. The Resolutions must clearly indicate approval of the department entering into the agreements as well as a statement on the B.C.R. [Band Council Resolution] that they understand that duplicate facilities will not be built on the Reserve for the term of the agreement (25 years)."

I am satisfied that this statement was in error, at least insofar as the proposed school at Little Buffalo was concerned. I am satisfied that the submission did not indicate that the Lubicon Lake Indian Band had expressed itself in favour of the joint school. One can speculate that the statement was too broad, in that the other schools referred to in the letter posed a different situation than did the proposed Little Buffalo school. Such speculation gains some strength from the fact that the letter refers to a "reserve" and the Lubicon Lake Indian Band has no reserve.

The complainants believe that the Northland School Division misrepresented the Band's position to the Department of Indian and Northern Affairs, leading the federal department to conclude that the Band supported the school. While the complainants do not suggest that the form, referred to above, was involved in the misrepresentation, they suggest that there were verbal communications that did misrepresent the Band's position.

There is no proof that this is so.

The Trustee, when questioned, candidly conceded that after his January, 1982 meeting with the Band councillor, he may have concluded that the Band favoured a new school and may have conveyed that impression to the federal department. I find no fault in that.

But there is no evidence that such an impression was given after the Community School Board expressed its opposition. Indeed, the evidence points in the opposite direction. Despite the Trustee's admission, neither the Regional Director of Indian and Northern Affairs nor my investigators have been able to find any federal official who says that he received information from the Trustee, or any other official of the Northland School Division, that the Band supported the proposed new school.

Some persons associated with the Band gave me the names of federal officials who were alleged to have said that they were given this impression. Those officials were questioned, and denied the statements attributed to them. Upon further questioning, the person who gave me these names admitted he may have misinterpreted what was said.

Even had such statements been made, and I emphasize that there is no proof of that, I do not believe that the Band would have suffered any prejudice as a result of those statements. The Band knows, and knew, that without a formal Band Council Resolution, the Department of Indian and Northern Affairs would not enter into an agreement with the province for the construction of a school. So long as the Band is opposed, it can simply refuse to pass such a resolution.

The second allegation relating to the school is to the effect that an official (not the Trustee) of the Northland School Division improperly directed the Chief of the Lubicon Lake Indian Band to have the Community School Board approve plans for the new school. This was alleged to have occurred prior to the Community School Board recommending a delay in consideration of the school.

The official stated he went to Little Buffalo believing he was to have a meeting with the Community School Board, at which he was to present the architect's plans for the proposed school. The members of the Community School Board say they had not agreed to any such meeting. In any event, the official arrived at Little Buffalo and no meeting took place.

The official states he went to the Band office where he left the plans and suggested that they be reviewed by the

Community School Board and any suggestions for changes be forwarded to the Division. The Chief of the Band does not dispute the words which were spoken by the official, but says that they amounted to a direction.

The matter therefore becomes a question of whether this was a "suggestion" or a "direction." I am not prepared to find that the official acted inappropriately, or that his comments amounted to a direction.

Insofar as the allegation suggests that the official did not act properly when dealing with the Chief, I am satisfied that the official did not know that the person to whom he was speaking was the Chief. The two had never met before, and the Chief acknowledges that he did not identify himself to the official.

The third school-related allegation is that the Trustee "interfered with the management of the democratically-elected Little Buffalo Community School Board" and "ignored the explicit and unanimous resolutions of the democratically-elected Little Buffalo Community School Board."

No one questions that the Community School Board was democratically elected. However, that fact alone does not give the Community School Board any authority. The terms of reference

set out earlier in this section of the report indicate that the Community School Board had the power to recommend, but not the authority to make decisions that would bind the Trustee.

The Trustee was obliged to consider the recommendations. He was not required to accept all or any of them. He was required to act in what he considered was the best interests of the Northland School Division and the children of school age within that Division. There is more than sufficient evidence that the Trustee did consider every recommendation that came from the Little Buffalo Community School Board and other Community School Boards within the Division. He had the discretion to decide whether or not to accept the recommendation, and he exercised that discretion. I cannot support this allegation.

The final criticism of the Trustee is an allegation that he held a "special secret meeting" at which he passed a bylaw authorizing funding for the proposed school at Little Buffalo. The criticism specifically mentions that the newly-elected trustees of the Northland School Division were not invited to attend this meeting.

By the time of this meeting -- November 14, 1983 -- the decision had been made to lift the trusteeship under which the Northland School Division was operating, and revert to the normal

elected school board. Trustees had been elected, and would take office in December, 1983. Thus, they had no authority or power at the time of the criticized meeting.

The Trustee explained that it was imperative that the bylaw be passed before the end of 1983. Only in this way, he said, could there be any guarantee that the money necessary to build the school would be available, should the school be constructed in 1984.

There is no evidence that the meeting at which the Trustee passed the bylaw was held in secret, or that there was anything at all nefarious about his actions. Indeed, rather than criticize the Trustee, I commend him. He was, in my view, acting in a completely responsible way in attempting to ensure that the funds would be available to build the Little Buffalo school. The bylaw did not authorize the commencement of work, but simply ensured that the money was available.

Thus, I find this allegation also to be unsubstantiated.

At the time of this report, the dispute over the school is not yet reconciled, and it is unlikely that it will be before the dispute about the land claim is resolved. What is of concern to me is that the funding for the school will not be available

beyond the end of 1984, and should it later be decided that the school should be built, the whole approval process must be repeated at a time when greater restraint measures are being implemented by the government.

I can understand the position and concern of the Lubicon Lake Indian Band. But I must express my concern that those most affected by this problem are the children who would benefit from a new school. Everyone involved in this situation agrees that the present school building is inadequate and it is clear that the quality of education can only be improved by providing an appropriate new facility.

There is one postscript which I must add, to avoid any suggestion that my investigation was less than complete.

The complainants did not, in their several submissions to me, raise any question about the way in which the Community School Boards were established. Nonetheless, the investigation did disclose what is a very technical error, one which did not, in my mind, prejudice anyone.

In circulating the terms of reference for the Community School Boards, the Trustee referred to authority which these Boards would have under section 27 of The School Act. That

section refers to "local advisory boards" and must be read in conjunction with section 26, which provides that the Minister of Education may establish local advisory boards upon petition and after certain procedures are carried out. The Department of Education brought to my attention the fact that no order under section 26 was made by the Minister relating to the Northland School Division.

Thus, from a strictly technical point of view, the Trustee's reference to section 27 as setting out the authority of the Community School Board was not correct.

I am satisfied, however, that the Trustee could seek advice from any person or group, and that he had the authority to establish a formal process, such as the Community School Boards, if he felt that was the best method of discharging his duties.

The idea of Community School Boards was proposed in the study made of Northland School Division which led to the order of trusteeship. The Trustee, once appointed, was told to implement that report and I think he is to be commended for moving, with all possible speed, toward the establishment of the Community School Boards.

Despite the fact that these Boards may not have had the legal power granted under section 27 of The School Act, the Trustee did have the right to seek input from them on those same issues. He did so, to his credit.

I reiterate that this was not an issue raised by the complainants, and my finding of this very technical misinterpretation of The School Act does not add to or detract from the complaints. It also does not alter my findings in any way.

CONCLUSIONS

When Mr. Grant Notley, the Leader of the Official Opposition in the Alberta Legislature, first wrote to me asking for this investigation, he enclosed a copy of the letter, already referred to, which the World Council of Churches had sent to the former Prime Minister of Canada.

Mr. Notley knew, as did I, that the Ombudsman for Alberta could not investigate the major thrust of that letter -- the issue of the unresolved land claim being asserted by the Lubicon Lake Indian Band over certain land in Northern Alberta.

The land claim issue is a thorny one, and is currently being dealt with at a number of levels. Legal actions are pending in both the Federal Court of Canada and the Alberta courts. In addition, Cabinet ministers and senior officials at both the federal and provincial levels are trying to come to an agreement that will be acceptable to everyone involved.

I fully appreciate the frustration the Band feels. Its members feel they are being deprived of that which is rightfully theirs, and they feel far too much time has been spent talking about the matter with no results.

The native people involved in this issue feel they have been caught between two levels of government and, to a very large extent, have become the victims of the protracted workings of our various systems. That still does not give me the authority to consider the land claim issue. The Ombudsman is not a substitute for either the judicial or political process, and it is one or both of those processes which will have to resolve this issue.

That is not to say that the investigation which is described in this report has been of no use or value. The World Council of Churches' letter made a number of serious allegations which are within the jurisdiction of the Ombudsman for Alberta. From that letter, I extracted three allegations which I thought needed to be reviewed. As described in the introduction, I agreed to add two other issues to the scope of the investigation at the request of the Band.

It is perhaps important that I say something here about the role of the Ombudsman when he is involved with a complaint.

For the 10 years I have been Ombudsman for Alberta, I have always stated that the first, and primary, role of the Ombudsman is to act as an independent and impartial investigator.

He must carefully review the allegation, seek out all of the evidence which exists, and then determine whether there is substance to the complaint. Only after the Ombudsman is satisfied that the complainant has been treated improperly is the Ombudsman entitled to take on the role of an advocate, seeking to right the wrong which has been done.

This procedure is designed to protect both the citizen and the public servant. If the citizen is right, then obviously something should be done to correct the problem. But if the public servant has acted properly, has acted fairly and in accordance with the laws and procedures that should govern him, then the public servant is entitled to have that known.

This investigation, like all others -- those which become public as well as those which do not -- was conducted according to those tenets.

After the allegations were reviewed, the evidence was obtained. Some witnesses came forward; others were sought out. All of the relevant documentation was reviewed. To ensure that the Band was satisfied that there were no other witnesses it felt should be interviewed, I went to Little Buffalo and met with the Chief and his advisor. I also met personally with oil company executives in Alberta and Ontario, and with the Deputy Ministers

of the departments which were the subject of the investigation. I have spent some time with Archbishop Edward Scott, Primate of the Anglican Church in Canada, who headed the delegation of clergy who went to Little Buffalo. I am fully satisfied that my investigation has been as thorough as it possibly can be.

As will be seen from the "Findings" section of the report, I have concluded that there is no evidence to support most of the charges which have been made. In one case, I note that I cannot come to a conclusion on the evidence which is available.

In connection with those allegations where I can come to a conclusion, based on the evidence, I have found that the public servants named by the Band were not guilty of the charges. They were acting in accordance with the law as it exists. There is no evidence that their actions and decisions were motivated by prejudice or ill will. Indeed, in some of the cases, particularly the issue involving the construction of a new school in Little Buffalo, one can draw no other conclusion than that they were acting in a way which they thought was to the benefit of the residents of that community.

It is painfully clear that the underlying issue -- the unresolved land claim -- will continue to cause many difficulties in the relationship between officials of the province and members

of the Band. This strained relationship, along with the fear of damaging their respective legal positions, makes it hard to consider the other issues that affect the residents of Little Buffalo. It is to be hoped that this issue can be resolved soon.

The letter from the World Council of Churches to the former Prime Minister understandably received a great deal of publicity. I wish to comment briefly on that letter.

First of all, it ought to be made clear that I recognize the right of the Church and her leaders to challenge governments and business (in this case, certain oil companies) to treat, with the highest moral purpose, all members of society. That is something we all want.

I recognize, perhaps better than many others, that the Church is rightly concerned about the impact of the dilemma facing the native people of Canada.

The Church and her leaders certainly have a responsibility to be the moral and social conscience of society. In this, however, the Church leaders are not alone -- nor should they be -- and the Church is not the only institution which expresses concern.

In the letter which the World Council wrote appears this statement:

> "In the last couple of years, the Alberta Provincial Government and dozens of multi-national oil companies have taken actions which could have genocidal consequences."

This language was designed to make a strong point, and so it does. But during my investigation, I was able to find no factual basis for it. I have not been provided with any evidence, either from the members of the Band or from other sources, that could substantiate such a serious accusation.

The refusal of the Crown to recognize the land claim which is being asserted by the Band, cannot be said to be an attempt to practise genocide. As I have noted in my report, the Crown questions the legal basis for the claim and is entitled, if not compelled by virtue of its mandate to act on behalf of all of the people, to ensure that it acts legally. The court cases brought by the Band are an attempt to prove the legality of the claim and if the issue is to be resolved through the judicial process, that is the proper way for it to be done.

At the same time, there is action on the political level which indicates to me that the federal and provincial governments are considering not only the legal obligations which may fall upon them, but the moral obligations as well.

It is certainly my hope that this issue can soon be resolved, so that the members of the Lubicon Lake Indian Band and other residents of the Little Buffalo area can turn their attention and energies to the many other matters which greatly affect their quality of life. The sense of suspicion and distrust which exists must end -- in the interests of all.

I am confident that the Chief and elders of the Band want simply what is best for their people. I am equally confident that the public servants involved with the Band are willing to help achieve that. An abundance of sensitivity, common sense and good will is called for.

While the land claim is in the forefront of everyone's mind, it cannot be allowed to eclipse everything else. Everyone involved deserves more than that.

SUMMARY OF RECOMMENDATIONS

1. THAT the officials responsible for the Trapper Compensation Program review critically their requirements for the reporting of damage to traps and snares, in an effort to take into consideration the various cultural backgrounds of those who are likely to come into contact with the program.

2. THAT the government undertake a review designed to ensure that notice of intention to build cutlines is given to trappers operating in the area of the cutline, and other interested parties, as far as possible in advance of the commencement of work on the cutline.

3. THAT in cases where it is necessary to utilize an interpreter in order to explain complicated matters, particularly those relating to legal rights and obligations, government departments use their best efforts to locate a qualified person who will demonstrate independence and provide the interpretation service in a manner not likely to arouse suspicion on the part of the persons who are negotiating with the government.